IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2331 OF 2005

Vijaysinha Ramkrishna Gaikwad ...Applicant

Versus

Vijay Dyaneshwar Dabhade & Anr ...Respondents

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Mr. Anil L. Desai, Advocate for Applicant.

Mr. Jayesh B. Kocheta, Adv. for Respondent No.1.

Ms. S.V. Gajare, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 25TH AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the applicant, the learned advocate for the respondent No.1 i.e. original complainant and the learned A.P.P. for the State.

2. The applicant has prayed for quashing of process issued against him in Criminal Case S.T.C.C. No.1715 of 2002 which is pending in the Court of learned J.M.F.C. Vadgaon-Maval, Pune. In the said case, process has been issued against the applicant under Sections 504 and 506 of I.P.C.

3. It may be stated here that, the applicant had

preferred an application before the learned Magistrate for recall of process. The said application came to be rejected. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. reported in (2004) 7 SCC 338,** it is clear that the Magistrate has no power to recall the process, hence, I am not inclined to interfere with the order of the Learned Magistrate rejecting the application of the applicant for recall of process.

4. Being aggrieved by the order of the learned Magistrate rejecting his application for recall of process, the applicant had preferred revision i.e. Criminal Revision No. 88 of 2004 before the Sessions Court. The Sessions Court has observed that the order of issuance of process is an interlocutory order and hence, revision would not lie against the order and the only remedy to the accused person would be under Section 482 of Cr.P.C.

5. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No. 550 of 2005, I am of the opinion that the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my

opinion, it would be appropriate that the applicant prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

6. Liberty is granted to the applicant to prefer revision before the concerned Sessions Court. The learned advocate for the applicant states that the necessary revision would be preferred within a period of six weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of six weeks from today. The learned advocate for the respondent i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

7. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

8. It is made clear that the revision shall be preferred against the order of the Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application of the applicant for recall of process.

9. Application is disposed of.

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